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D.   REMARKS

Status of the Claims

Claims 1, 3-8, 10-14, and 16-20 are currently present in the Application, and claims 1, 8, and 14 are independent claims. Claims 1, 3-8, 14, and 17-20 have been amended, and claims 2, 9, and 15 have been cancelled.

Drawings

The Office Action did not indicate whether the formal drawings filed by the Applicants are accepted by the Examiner. Applicants respectfully request that the Examiner indicate whether the drawings filed on March 15, 2001 are accepted by the Examiner in the next communication.

Amendments to the Specification

The specification has been amended to correct inadvertent, typographical errors.

Claim Rejections Under 35 U.S.C. § 101

Claims 1-7 and 14-20 stand rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. Applicants respectfully traverse the rejections under 35 U.S.C. § 101.

While Applicants disagree with the rejections, Applicants have amended the method claims and computer program product claims in the Application. With regard to the method claims, claims 1 and 3-7 have been amended, and claim 2 has been cancelled. As an initial matter, Applicants have amended the preamble of all the method claims to clearly claim "a computer-implemented method." Independent claim 1 has been further amended to clarify that the determining is performed "by a network pricing computer," and includes requesting and receiving

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traffic data from "one or more network devices." Support for the amendments is found in, for example, Applicants' Figure 7 (see, in particular, reference numerals 700, 725, and 730) and described in Applicants' specification on page 20, line 1 through page 22, line 12.

In the Office Action, the Examiner asserts that "there is no significant recitation of the data processing system or calculating computer for performing data processing operations" in claim 1. Applicants respectfully disagree. As amended, independent claim 1, and the claims which depend from it, clearly point out and claim the data processing being done by the network pricing computer and the network devices. Applicants respectfully submit that the requirements of 35 U.S.C. § 101 are more than met by claiming the data processing interactions between a network pricing computer and one or more network devices.

With regard to claims 14-20, Applicants have amended claims 14 and 17-20, and cancelled claim 15. The claims have been amended to clarify that the computer program product is stored on a computer operable media that contains instructions for execution by a computer. When executed, the instructions cause the computer to execute the method as claimed in claims 14 and 16-20.

As stated in MPEP § 2106(IV)(B)(1), "[w]hen functional descriptive material is recorded on some computer-readable medium it becomes structurally and functionally interrelated to the medium and *will be statutory in most cases* since use of technology permits the function of the descriptive material to be realized" (emphasis added). Further, Applicants respectfully point out that in 1995, the Patent Office agreed that claims to software stored on a disk or other computer operable medium were

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proper statutory subject matter (In re Beauregard, 53 F.3d 1583, 35 U.S.P.Q.2d (BNA) 1383, Fed. Cir. 1995). Applicants note that claims 14 and 16-20 are simply computer product claims corresponding to method claims 1 and 3-7. As discussed above, claims 1 and 3-7 are directed towards statutory subject matter. Similarly, claims 14 and 16-20 are also directed towards statutory subject matter, as they are claiming the embodiment of such software on a computer operable medium, such as a magnetic disk.

Based on the above, Applicants respectfully submit that the rejections under 35 U.S.C. § 101 have been overcome, and respectfully request that the Examiner withdraw the rejections under 35 U.S.C. § 101.

Claim Rejections - Alleged Anticipation Under 35 U.S.C. § 102

Claims 1-20 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Saari et al., U.S. Patent No. 6,338,046 (hereinafter Saari). Applicants respectfully traverse the rejections under 35 U.S.C. § 102. Note that independent claim 1 has been amended to include the limitations previously found in dependent claim 2, and claim 2 has been cancelled. Similarly, independent claims 8 and 14 have been amended to include the limitations previously found in dependent claims 9 and 15, respectively, and claims 9 and 15 have been cancelled.

To anticipate a claim, the reference must teach every element of the claim (see MPEP § 2131). Applicants respectfully submit that Saari does not teach every element of claims 1, 3-8, 10-14, and 16-20. Saari purports to teach a system and method for charging for the use of network service connections (col. 2, lines 2-3). According to Saari, when a connection is established with a node, "a billing message or cell is

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transmitted to the node over the connection" (col. 2, lines 6-8). The billing cell includes billing information which is used by the node to produce billing information (col. 2, lines 8-10).

Using amended, independent claim 1 as an exemplary claim, Applicants' independent claims include the following elements:

* determining, by a network pricing computer, an amount of traffic on a computer network, wherein the determining includes requesting traffic data from one or more network devices and receiving the requested traffic data in response to the requests;
* calculating, by the network pricing computer, a network usage price in response to the determination; and
* applying the network usage price to a network session

Applicants respectfully submit that Saari does not teach determining an amount of traffic on a computer network by "requesting traffic data from one or more network devices and receiving the requested traffic data in response to the requests," as taught and claimed by Applicants. The Examiner cites Saari at col. 4, lines 55-65 as teaching this aspect of Applicants' claims (see Office Action, page 3, lines 9-11). However, the cited portion of Saari reads as follows:

By way of example, and with continued reference to FIG. 2, it is assumed that a user 26 wishes to transfer information between an information source 27 and a destination 29. The user 26 accesses the network 20 and establishes a connection 33, such as a virtual connection within the context of an ATM network, with a node 24a. It is noted that the node 24a is under the control or otherwise

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maintained by an operator OP-A. At the time of, or following, establishing the connection 33 between the source 27 and the node 24a, the source 27 transmits a billing cell 31 prior to transmitting cells of information over the connection 33. (Saari, col. 4, lines 55-65).

The cited portion of Saari discloses that a user accesses the network and establishes a connection. Once a connection is established, a billing cell is transmitted to a node "prior to transmitting cells of information over the connection." There is no teaching, or even any suggestion, of "requesting traffic data from one or more network devices" and then "receiving the requested traffic data in response to the requests," as taught and claimed by Applicants in amended, independent claims 1, 8, and 14. Although Saari briefly mentions the use of ATM traffic parameters (col. 4, lines 32-33), Saari does not appear to make any *requests* at all regarding traffic data, and therefore does not *receive* any data regarding traffic data. Saari merely establishes a connection and then transmits a billing cell prior to transmitting cells of information over the connection.

The billing cells used by Saari are not analogous to requesting and receiving traffic data from network devices. Rather, as disclosed by Saari, a billing cell is copied by a node and used by the node to produce billing information (col. 2, lines 6-10). As data passes from node to node, each node passes the billing cell along to the next node (col. 2, lines 20-35). The nodes also transmit their charging information to a network billing system which generates a total charge which is sent to a user (col. 2, lines 27-30). However, Saari does not teach or suggest "requesting traffic data from one or more network devices" and then "receiving the requested traffic data

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in response to the requests," as taught and claimed by Applicants. The use of a billing cell, which is transferred from node to node, is simply not analogous to requesting and receiving traffic data from one or more network devices.

For the reasons set forth above, Applicants respectfully submit that independent claims 1, 8,and 14, and the claims which depend from them, are not anticipated by Saari.

Not withstanding the patentability of claims 1, 3-8, 10-14, and 16-20 based on the above discussion, Applicants would like to further discuss dependent claims 7, 13, and 20. Using claim 7 as an exemplary claim, claims 7, 13, and 20 add the following element:

- writing a high priority header to one or more packets originating from a computer system corresponding to the network session between the session start time and the session stop time

The Examiner cites Saari's Figure 2 as teaching this aspect of Applicants' invention (see Office Action, page 4, lines 13-16). Figure 2 depicts a billing cell (reference numeral 31) with a header (reference numeral 36). Although Saari does disclose that its billing cells include a header, this is in no way analogous to the high priority headers as taught and claimed by Applicants. The header disclosed by Saari is included as part of a billing cell, not added to a packet of data originating from a user computer system, as taught and claimed by Applicants. As disclosed by Saari, "[t]he billing cell 31 includes a header 36 which uniquely identifies this cell as providing billing information" (col. 4, lines 66-67). The header information provides "a means of distinguishing between

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billing cells and non-billing cells" (col. 5, lines 4-5). This is in direct contrast to the **high priority headers** as taught and claimed by Applicants, which are written to the packets that originate from the user computer system, and are not separate from the actual data or information, as disclosed in Saari. In other words, Applicants do not distinguish between "billing cells" and "non-billing cells," but rather, Applicants teach and claim "writing a high priority header to one or more packets originating from a computer system corresponding to the network session between the session start time and the session stop time."

According to Saari, when a connection is established with a node, "a billing message or cell is transmitted to the node over the connection" (col. 2, lines 6-8). The billing cell includes billing information which is used by the node to produce billing information (col. 2, lines 8-10). However, note that the billing cell is separate from the information cells which are transmitted over the connection. Note that Saari specifically states that "[i]nformation cells are transmitted over the same connection **subsequent to the transmission of the billing cell**" (col. 2, lines 10-12, emphasis added). In other words, a billing cell (and similarly, a terminate billing cell, as discussed in col. 5, lines 27-32), is a completely different entity from the information, or data, that is transmitted via a node.

In contrast, Applicants teach and claim "writing a high priority header to one or more packets originating from a computer system corresponding to the network session between the session start time and the session stop time." As clearly claimed by Applicants in dependent claims 7, 13, and 20, the "high priority header" is **written to the packets** that originate

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from the user computer system. The "high priority" headers are not separate from the packets that originate from the user computer system. In direct contrast to Applicants' claimed invention, Saari discloses that "the source 27 transmits a billing cell 31 *prior* to transmitting cells of information over the connection 33" (col. 4, lines 63-65, emphasis added).

For the reasons set forth above, Applicants respectfully submit that dependent claims 7, 13, and 20 are not anticipated by Saari.
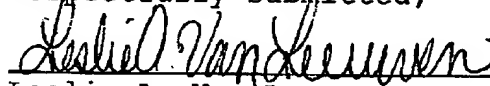
<u>Conclusion</u>

As a result of the foregoing, it is asserted by Applicants that the remaining claims in the Application are in condition for allowance, and Applicants respectfully request an early allowance of such claims.

Applicants respectfully request that the Examiner contact the Applicants' attorney listed below if the Examiner believes that such a discussion would be helpful in resolving any remaining questions or issues related to this Application.

Respectfully submitted,

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